**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 13959 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**
**and**
**HONOURABLE MR.JUSTICE K.A.PUJ**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**VAJIR MENABEN SHANKARBHAI - Petitioner(s)**
**Versus**
**ELECTION COMMISSION THRO' THE ELECTION COMMISSIIONER & 3 - Respondent(s)**

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**Appearance :**
MR PRAVIN G VAGHELA for Petitioner(s) : 1,
MR NV ANJARIA for Respondent(s) : 1 - 3.
MR NV SOLANKI for Respondent(s) : 4,

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**

**and**

**HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 18/09/2007**
**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE M.S.SHAH)**

Mr. N. V. Anjaria, learned counsel for the State Election Commission has placed on record report dated 11.09.2007 of the

Secretary, Gujarat State Election Commission along with the copy of the report dated 06.09.2007 of the Collector, Banaskantha.

2. Elections of the members of Gram Panchayat, Limbuni, Taluka Vav, Dist. Banaskantha were held on 10.12.2006. The Sarpanch of the Gram Panchayat was to be elected by all the voters in the village and members of the Panchayat were to be elected wardwise. The Upa-Sarpanch would then be elected by the elected members out of themselves. The seat of member to be elected from Ward No.1 of the village was reserved for a lady candidate and two candidates contested – (i) Vajir Menaben Shankarbhai (petitioner) and (ii) Chaudhary Navuben Ramabhai (respondent No.4). The polling took place on 10.12.2006 and counting took place on 12.12.2006.

3. On 22.1.2007, respondent No.4 -Chaudhary Navuben Ramabhai filed Election Petition No.1 of 2007 in the Court of the learned Civil Judge (SD), Vav, Dist. Banaskantha with the following case:-

3.1 After the counting was over on 12.12.2007, the Election Officer had declared in presence of respondent No.4 and the petitioner as well as their respective polling agents that the number of total votes cast for electing the member from Ward No.1 was 169 out of which 5 were treated as invalid and, therefore, there were in

all 164 valid votes; out of those valid votes, respondent No.4 had secured 101 votes and the petitioner had secured 63 votes. Respondent No.4 had thereupon taken out the victory procession and respondent No.4 was accordingly greeted in Ward No.1.

3.2 Since the Upa Sarpanch of the Gram Panchayat is to be elected by the members from amongst themselves, a meeting of the Gram Panchayat was convened for 23.1.2007 as per the agenda notice served upon the fourth respondent on 19.1.2007 at about 1-00 PM. The petitioner herein- Vajir Menaben Shankarbhai was also served with a similar agenda notice and the petitioner approached the fourth respondent on 19.1.2007 wondering why the petitioner was called to attend the meeting of the Panchayat scheduled for 23.1.2007 in spite of the fact that the petitioner was defeated in the election and the fourth respondent had won the election. In view of this development, the fourth respondent immediately approached the authorities to find out the reason why the petitioner was also served with notice for attending the meeting of the gram panchayat. The Talati-cum-Mantri informed the fourth respondent that he knew that the candidate elected on 12.12.2006 was the fourth respondent (Chaudhary Navuben Ramabhai), and, therefore, he had served the agenda notice for the meeting of the panchayat on the fourth respondent but he had received on 18.1.2007 the Election Commission notification declaring that petitioner- Vajir Menaben Shankarbhai was elected as a member

from Ward No.1. Hence the agenda notice for the meeting scheduled for 23.1.2007 was served on the petitioner also. The fourth respondent also submitted an application to the Collector pointing out the above discrepancy. However, the Mamlatdar, Vav as well as the Talati-cum-Mantri informed the fourth respondent that the fourth respondent will have to institute Court proceedings as the Mamlatdar or Talati-cum-Mantri do not have any power or authority to correct mistakes in the notification declaring a candidate as elected. 21.1.2007 was a public holiday. Therefore, the fourth respondent filed the above-numbered election petition on 22.1.2007 challenging the notification under which the petitioner-Vajir Menaben Shankarbhai was declared as elected as a member of the gram panchayat from Ward No.1.

4. In the above election petition, the fourth respondent also submitted an application for recounting and the Election Tribunal passed order dated 14.5.2007 for recounting by Court Commissioner with specific directions that the Court Commissioner will only count the number of votes cast in favour of the election petitioner (respondent No.4 herein) and opponent No.1 before the Tribunal (the petitioner herein) and that the Commissioner was not to decide any question of validity or otherwise of the votes cast.

5. The above order dated 14.5.2007 of the Election Tribunal came to be challenged in the present petition filed on 8.6.2007.

Petitioner Vajir Menaben Shankarbhai contended that as per the result declared in the election notification displayed by the Mamlatdar on the notice board of the Taluka Panchayat, Vav on 12.12.2006, the petitioner was shown to have secured 101 votes and the fourth respondent was shown to have secured 63 votes. It was submitted that the fourth respondent had not produced any cogent and reliable evidence except one affidavit of Laljibhai Karsanji Jadeja the counting agent of the fourth respondent (election petitioner) to show that the fourth respondent had obtained 101 votes and that 63 votes were obtained by petitioner Vajir Menaben. The petitioner particularly raised a question of law that the election petition filed by the fourth respondent before the Election Tribunal on 22.1.2007 was time barred as the period of limitation prescribed by Section 31 was 15 days from the date of declaration of the result and the election petition was filed after that period. Strong reliance was placed upon a decision of a Division Bench of this Court in Arjunbhai Mangabhai Nayak vs. Rameshbhai Bhulabhai Nayak, 2002 (3) GLR 2321 holding that the relevant date for the purpose of computation of the period of limitation is the date of dclaration of the result as provided in sub-rule (1) of Rule 63 and not the date of publication by the Election Commission as provided in sub-rule (3) of Rule 63 of the Rules.

6. In view of the above legal contention raised by the petitioner herein (Menaben), this Court issued notice for final disposal and

granted ad-interim stay of the order dated 14.5.2007 of the Election Commission for recounting. In response to the notice, the fourth respondent appeared before this Court and defended the order of the Election Tribunal on the ground that it was the fourth respondent who had obtained 101 votes as against 63 votes obtained by the petitioner. The fourth respondent who was personally present before the Court even offered to deposit a sum of Rs.10,000/- to show her bonafides, meaning thereby if upon recount also the fourth respondent were found to obtain lesser votes than the petitioner, the said amount of Rs.10,000/- would be paid over to the petitioner. Considering the extraordinary facts of the case subject to the petitioner depositing Rs.10,000/- with the Registry, we directed the Election Tribunal to undertake recounting and submit a report along with the entire record and proceedings of the Tribunal. It was further directed that the recounting shall be done in presence of the petitioner and the fourth respondent and their authorised agents.

7. On the next date of hearing, report dated 17.8.2007 of the Court Commissioner at Exh.37 was placed before us indicating that the fourth respondent (Chaudhary Navuben Ramabhai) had secured 101 votes and that the petitioner (Vajir Menaben Shankarbhai) had secured 63 votes out of total 164 valid votes and that 5 votes were already treated as invalid. The Court Commissioner's report was also signed by the parties and the Talati-cum-Mantri of village

Limbuni and also the Returning Officer.

No dispute was raised by the petitioner or her learned advocate or any other party regarding the above results on recount. We, therefore, directed the Election Tribunal at Vav to declare the results of the elections in question immediately. In view of the seriousness of the matter, we also directed the Election Commission to hold an inquiry in the matter through the District Election Officer and to submit a report before this Court indicating who were the person/s responsible for subverting the entire election process to th extent of getting the candidate with less number of votes elected – petitioner Vajir Menaben Shankarbhai as against the fourth respondent (Chaudhary Navuben Ramabhai) who had actually secured more votes. We also directed refund of the amount of Rs.10,000/- to the fourth respondent.

8. In compliance with the above direction, Mr Anjaria learned counsel for the State Election Commission has placed on record report dated 11.9.2007 of the Secretary, Gujarat State Election Commission along with a copy of the report dated 6.9.2007 of the Collector, Banaskantha. The above report indicates that the following Officers were discharging duties at the election in question :-

| Sr. No. | Name of the Officer | Designation during election duty. |
|---|---|---|
| 01. | Shri H. V. Moyuddin | Election Officer |
| 02. | Shri B. C. Trivedi | Assistant Election Officer. |
| 03. | Shri N. V. Savaliya | Counting Supervisor. |
| 04. | Shri H. V. Trivedi | Counting Assistant. |
| 05. | Shri K. K. Rajput | Counting Assistant. |

9. It is most shocking that on account of dereliction of duty on the part of the above Officers, the election results were subverted and the candidate having secured only 63 votes was declared elected as against the candidate who had secured 101 votes. In election matters and particularly in writ petitions under Article 226 of the Constitution, the Courts are reluctant to interfere, more particularly, to grant recount unless a strong case is made out after the evidence is led at the trial. However, considering the extraordinary facts and circumstances of the case, the Tribunal had passed an interim order of recount and subsequent result of recount have more than vindicated the stand of the election petitioner and justified the interim order. Ultimately, as per the recount, the fourth respondent is found to have secured the maximum number of votes and has, therefore, been declared elected as a member of Limbuni gram panchayat from Ward no.1.

10. However redressal of the election petitioner's grievance (the fourth respondent herein) cannot be a ground for condoning dereliction of duty on the part of the Officers who are also required

to be prosecuted for the offences punishable under Sections 39 & 40 and any other relevant provisions of the Gujarat Panchayats Act, 1993. When a candidate with less number of votes is declared elected as against the candidate who has obtained higher number of votes, obviously the concerned Officers have, in the conduct of the management of the election, done an act for the furtherance of the prospects of election of the candidate who has obtained the lesser number of votes. Similarly, the concerned officers have without reasonable cause been guilty of a serious act of commission or omission in breach of their official duty. In view of the above, we direct the State Election Commission to launch prosecution against the erring Officers within one month from the date of receiving this judgment. It will be open to the State Election Commission to authorize an Officer of the District Panchayat to lodge the complaint.

11. Over and above launching such prosecution, the respondent authorities, particularly, the District Development Officer shall also take suitable departmental action against the erring Officers and impress upon all the Officers to be entrusted with election duties hereafter that no such lapse shall be committed in future.

12. Before finally disposing of this matter, we may also consider the Division Bench Judgment in Arjunbhai Mangabhai Nayak vs. Rameshbhai Bhulabhai Nayak, 2002 (3) GLR 2321 which was relied upon by the petitioner in support of the contention that 15 day

period of limitation commences from the date of declaration of the result and not from the date of publication.

13. Rule 63 of the Gujarat Panchayats Election Rules, 1994 reads as under :-

> "63. Declaration and publication of result :-
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> (1) When the counting of votes has been completed, the Returning Officer shall in absence of any direction by the Election Commission to the contrary, forthwith declare the result of the election in Form 28 by affixing a signed copy of the result in that form on the Notice Board in his office. He shall also send a copy of the same to -
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> (a) the Election Commission;
> (b) the Secretary to Government, Panchayats and Rural Housing Department;
> (c) the Development Commissioner;
> (d) the District Election Officer;
> (e) the District Panchayat;
> (f) the Taluka Panchayat;
> (g) the Village Panchayat in respect of Village Panchayat election of a Sarpanch.
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> ... ... ... .... .... ....
>
> (3) As soon as the declaration of the result in Form 12 or Form 28 is received from the Returning Officer, the Election Commission shall publish the name or names of elected member or members as the case may be, .... .... ... ... in Form 29, 30 or 31 as may be appropriate by affixing a signed copy thereof on the Notice Board in its office."

Sub-section (1) of Section 31 of the Gujarat Panchayats Act, 1963 in so far as the same is relevant, reads as under:-

> "31. Determination of validity of election, inquiry by Judge and procedure :-
>
> (1) If the validity of any election of a member of a Panchayat is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may, at any time

> within fifteen days after the date of the declaration of the results of the election, present an election petition to the Civil Judge (Junior Division), and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division) (hereinafter referred to as "the Judge") having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question."
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> (emphasis supplied)

14. Having regard to the provisions of Rule 63, it is clear that while publication of the name of the elected member is to be done by the Election Commission under sub-rule (3) of Rule 63, declaration of the result of the election is to be made by the Returning Officer under sub-rule(1) of Rule 63. However, declaration of the result of the election cannot be said to have been made unless the Returning Officer complies with the provisions of sub-rule (1) of Rule 63 by declaring the result of the election in Form 28 by affixing a signed copy of the result in that form on the Notice Board in his office and also by sending a copy of the same to the various authorities indicated in sub-rule (1) including the village panchayat.

15. The contention of the petitioner herein (opponent in the election petition) was that declaration of the result was complete as soon as the Returning Officer affixed Form 28 on his Notice Board. Apart from the fact that there is no affidavit of the Returning Officer stating that he had affixed Form 28 on the Notice Board in his office on 12.12.2006, we are of the view that if such declaration is not sent to the village panchayat, the declaration cannot be said to be complete. It is pertinent to note that Form 28 does not require

the candidates or their polling agents to place their signature on Form 28. Hence if the mischief similar to the one played in the present case were to be played by any other officer/s in charge of counting and declaration of the result, the copy of Form 28 is not sent to village panchayat and the formal publication of the result by the Election Commission under sub-rule (3) of Rule 63 takes place merely by affixing a signed copy of Form 28 in the office of the Election Commission at Gandhinagar, a candidate securing the highest number of votes may not be in a position to challenge the election result within the period of 15 days from the date of counting.

16. Having considered the relevant rules and the forms set out in the Appendix, we are also of the view that the State Election Commission may consider whether after the counting is over, the signatures of the candidates/their Agents may be obtained on Form 28 containing the declaration of the result because the period of limitation for filing an election petition as stipulated in sub-section (1) of Section 31 of the Gujarat Panchayats Act begins to run from the date of declaration by the Returning Officer under sub-rule (1) of Rule 63 and not from the date of publication of the result under sub-rule (3) of Rule 6. As indicated hereinabove, publication of the result by the State Election Commission may ordinarily take two to three weeks and such publication may also be made by affixing a copy of declaration of result on the Notice Board of the office of the State Election Commission at Gandhinagar. The Election

Commission may also impress upon the returning officers to send copy of the result in Form 28 to the concerned village panchayat and other authorities mentioned in sub-rule (1) of Rule 63, immediately after affixing the same on the notice board in his office.

17. Subject to the above directions and observations, the present petition filed by Vajir Menaben Shankarbhai is dismissed with costs quantified at Rs.10,000/- which shall be deposited by petitioner – Vajir Menaben Shankarbhai before the Election Tribunal at Vav by 30th October 2007. Upon such deposit, fourth respondent Chaudhary Navuben Ramabhai shall be permitted to withdraw the amount. In case of failure on the part of Vajir Menaben Shankarbhai to deposit the said amount, the fourth respondent – Chaudhary Navuben Ramabhai will be entitled to recover the same in accordance with law.

18. In view of the order dated 03.09.2007 of the learned Principal Judge and Election Tribunal at Vav and the present judgment dismissing this petition, the respondent authorities shall take all the necessary action and pass consequential orders and declarations as required by law. The respondent-authorities shall also launch prosecution against the erring officials and also take departmental action against them in light of the observations made in paras 10 and 11 of this judgment.

It is clarified that pendency of the criminal prosecution shall

not come in the way of the departmental action being taken against the erring officials.

[M. S. SHAH, J.]

[K. A. PUJ, J.]

Savariya/zgs